



Billing Code: 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2011-0725, FRL-9922-04-Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM_{2.5}, 2008 Lead, 2008 Ozone, and 2010 NO₂ National Ambient Air Quality Standards; South Dakota

AGENCY: Environmental Protection Agency

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) revisions from the State of South Dakota to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter (PM_{2.5}) on July 18, 1997 and October 17, 2006; lead (Pb) on October 15, 2008; ozone on March 12, 2008; and nitrogen dioxide (NO₂) on January 22, 2010. EPA is also approving SIP revisions the State submitted updating the Prevention of Significant Deterioration (PSD) program and provisions regarding state boards. Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2011-0725. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, e.g., CBI or other

information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically through

www.regulations.gov or in hard copy at the Air Program, Environmental Protection Agency

(EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at

all possible, you contact the individual listed in the **FOR FURTHER INFORMATION**

CONTACT section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S.

Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street,

Denver, Colorado 80202-1129, 303-312-6563, fulton.abby@epa.gov.

SUPPLEMENTARY INFORMATION:

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I. Background

Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPR) published on December 1, 2014 (79 FR 71040).

The NPR proposed approval of South Dakota's submissions with respect to the following infrastructure elements for the 1997 and 2006 PM_{2.5}, 2008 Pb, 2008 ozone, and 2010 NO₂ NAAQS: CAA 110(a)(2) (A), (B), (C) with respect to minor new source review (NSR) and PSD requirements, (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). The reasons for our approval are provided in detail in the NPR.

For reasons explained in the NPR, EPA also proposed to approve revisions to the Administrative Rules of South Dakota (ARSD) 74:36:09 submitted on July 29, 2013, which incorporate by reference the requirements of EPA's September 29, 2010 PM_{2.5} Increment Rule. Specifically, we proposed to approve the adoption of the text of 40 CFR 52.21, paragraphs (b)(14)(i),(ii),(iii), (b)(15)(i),(ii), and paragraph (c) as they existed on July 1, 2012 by approving revisions to: ARSD 74:34:09:02 (Prevention of significant deterioration) and 74:36:09:03 (Public participation).

For reasons explained in the NPR, EPA proposed approval of revisions to ARSD 74:09 and the South Dakota Codified Laws (SDCL) 1-40-25.1 submitted on June 11, 2014 to satisfy requirements of element (E)(ii), state boards. Finally, EPA proposed approval of D(i)(I) prongs 1 and 2 for the 2006 PM_{2.5}, 2008 Pb, and 2010 NO₂ NAAQS. EPA will act separately on infrastructure element (D)(i)(I), interstate transport for the 2008 ozone NAAQS.

II. Response to Comments

No comments were received on our December 1, 2014 NPR.

III. Final Action

EPA is approving the following infrastructure elements for the 1997 and 2006 PM_{2.5}, 2008 Pb, 2008 ozone, and 2010 NO₂ NAAQS: CAA 110(a)(2) (A), (B), (C) with respect to minor

NSR and PSD requirements, (D)(i)(II) prongs 3 and 4, (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is also approving revisions to ARSD 74:36:09 submitted on July 29, 2013, which incorporate by reference the requirements of EPA's September 29, 2010 PM_{2.5} Increment Rule. Specifically, we are approving the adoption of the text of 40 CFR 52.21, paragraphs (b)(14)(i),(ii),(iii), (b)(15)(i),(ii), and paragraph (c) as they existed on July 1, 2012 by approving revisions to: ARSD 74:36:09:02 (Prevention of significant deterioration) and 74:36:09:03 (Public participation). EPA is also approving revisions to ARSD 74:09 and SDCL 1-40-25.1 submitted on June 11, 2014 to satisfy requirements of element (E)(ii), state boards. Finally, EPA is approving D(i)(I) prongs 1 and 2 for the 2006 PM_{2.5}, 2008 Pb, and 2010 NO₂ NAAQS. EPA will act separately on infrastructure element (D)(i)(I), interstate transport for the 2008 ozone NAAQS.

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork

Reduction Act (44 USC 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, Aug. 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, Nov. 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take

effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, Incorporation by reference.

Authority: 42 U.S.C. 7401 et seq.

Dated: January 14, 2015.

Debra H. Thomas,

Acting Regional Administrator,

Region 8.

40 CFR part 52 is amended to read as follows:

PART 52 APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart QQ - South Dakota

2. Section 52.2170 is amended:

a. In paragraph (c)(1) by:

i. Adding a new centered heading for “74:09:01 Contested Case Procedure” in numerical order and the table entries “74:09:01:20” and “74:09:01:21” in numerical order;

ii. Revising the table entries for “74:36:09:02” and “74:36:09:03”; and

b. In the table in paragraph (e) by adding the entries “XIV”, “XV”, “XVI”, “XVII”, and “XVIII” in numerical order.

The revised and added text read as follows:

§ 52.2170 Identification of plan.

* * * * *

(c) * * *

(1) * * *

| State citation | Title/subject | State effective date | EPA approval date and citation¹ | Explanations |
|--|------------------------------------|-----------------------------|--|---------------------|
| 74:09:01 Contested Case Procedure | | | | |
| 74:09:01:20 | Board member conflict of interest. | 5/29/2014 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 74:09:01:21 | Board member | 5/29/2014 | [insert date of | |

| | | | | |
|---|--|-----------|--|--|
| | potential conflicts of interests. | | publication in the Federal Register], [insert Federal Register citation] | |
| * * * * * | | | | |
| 74:36:09 Prevention of Significant Deterioration | | | | |
| * * * * * | | | | |
| 74:36:09:02 | Prevention of significant deterioration. | 6/25/2013 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| 74:36:09:03 | Public participation. | 6/25/2013 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| * * * * * | | | | |

¹ In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

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(e) * * *

| Name of nonregulatory SIP provision | Applicable geographic or non-attainment area | State submittal date/adopted date | EPA approval date and citation⁵ | Explanations |
|--|---|--|---|---------------------|
| * * * * * | | | | |
| XIV. Section 110(a)(2) Infrastructure Requirements for the 1997 and 2006 PM _{2.5} NAAQS | Statewide | Submitted: 5/20/2008 and 03/04/2011 | [[insert date of publication in the Federal Register], [insert Federal Register citation] | |
| XV. Section 110(a)(2) Infrastructure Requirements for the 2008 | Statewide | Submitted: 10/10/2012 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |

| | | | | |
|--|-----------|----------------------|--|--|
| Lead NAAQS | | | | |
| XVI. Section 110(a)(2) Infrastructure Requirements for the 2008 8-hour Ozone NAAQS | Statewide | Submitted: 5/21/13 | [insert date of publication in the Federal Register], [insert Federal Register citation] | Excluding 110(D)(i)(I), interstate transport for the 2008 ozone NAAQS which will be acted on separately. |
| XVII. Section 110(a)(2) Infrastructure Requirements for the 2010 NO ₂ NAAQS | Statewide | Submitted: 10/23/13 | [insert date of publication in the Federal Register], [insert Federal Register citation] | |
| XVIII. SDCL (South Dakota Codified Laws), 1-40-25.1 | Statewide | Submitted: 6/11/2014 | [insert date of publication in the Federal Register], [insert Federal Register citation] | Source: SL 1995, ch 318 (Ex. Ord. 95-2), § 15. |

⁵ In order to determine the EPA effective date for a specific provision listed in this table, consult the Federal Register notice cited in the column for the particular provision.